

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

HEATHER SMITH, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

WHALECO INC. DBA TEMU,

Defendant.

Case No. 5:23-CV-00559-D

CLASS ACTION

**MOTION TO EXTEND DEADLINES RELATED TO DEFENDANT'S
MOTION TO COMPEL ARBITRATION**

Pursuant to Federal Rule of Civil Procedure 6(b)(1) and Local Rule 7.1 (h) & (k),

Plaintiff Valerie Eakins files this motion to extend the time to file opposition and reply
briefs related to Defendant's Motion to Compel Arbitration (Dkt. 33) and states as
follows:

1. This motion is untimely as set forth below.
2. This is a putative class action under Oklahoma's newly enacted Telephone
Solicitation Act of 2022, Okla. Stat. tit. 15, § 775C.1, *et. seq.* ("the OTSA").
3. The Court granted Defendant's Motion to for Leave to Resubmit Motion to
Compel Arbitration on November 8, 2015. Dkt. No. 32. Defendant filed its Motion to
Compel Arbitration and Brief in Support on November 15, 2023 ("the Motion"). Dkt. 33.
4. Under Local Rule 7.1 Plaintiff's opposition was due on December 6, 2023
and Defendant's reply would have been due on December 13, 2023.

5. On November 20, 2023 the parties agreed to reciprocal extensions which contemplated the following briefing schedule:

Plaintiff's Opposition due January 5, 2024

Defendant's Reply due January 26, 2024

6. The parties agreed to request this extension because of the need to fully address the factual and legal basis of Defendant's Motions, Defendant's need to reply to same, and the intervening Thanksgiving, Christmas, and New Year's holidays.

7. Counsel for Plaintiff undertook the responsibility to prepare the agreed motion to extend the deadlines, but did not file timely the joint motion to extend the deadlines as agreed by the parties due to an inadvertent docketing error. Counsel for Plaintiff does so now out of time with apologies to the Court and opposing counsel.

8. Counsel for Plaintiff has sought to confer with counsel for Defendant but has been unable to ascertain Defendant's position on this motion today. Out of an abundance of caution, counsel for Plaintiff is filing the motion now and will supplement the motion with Defendant's position.

9. Plaintiff will submit a proposed order on this motion contemporaneously herewith.

WHEREFORE, Plaintiff requests the Court grant its out-of-time Motion to Extend Deadlines Related to Defendant's Motion to Compel Arbitration and seeks an Order entering the above-proposed briefing schedule.

Respectfully submitted,

/s/ Kathy R. Neal
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Counsel for Plaintiff and the Putative Class

CERTIFICATE OF ELECTRONIC SERVICE AND FILING

I hereby certify that on this 8th day of December, 2023, I caused the foregoing instrument to be filed with the Clerk of the Court using the ECF System for filing, with electronic service to be made via CM/ECF to those registered participants of the ECF System.

/s/ Kathy R. Neal